



**The Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Washington Patrol Service, Inc.
File: B-225610; B-225878; B-226411
Date: April 7, 1987

DIGEST

1. Protest contending that the contracting officer erred in finding the protester's price to be unreasonable is denied where past procurement history and other factors indicate that the contracting officer's determination is reasonable.
2. Protest contending that the contracting officer acted in bad faith is denied since the protester failed to meet its burden of submitting proof that the contracting officer had a specific and malicious intent to injure the protester. The standard is not met by allegations that the contracting officer delayed sending the protester a request for proposals, that she found the protester's price, which was 33 percent above that of a nonresponsive bid, to be unreasonable, or by questions suggesting that certain investigations within the discretion of the contracting officer should have been made.

DECISION

Washington Patrol Service, Inc. (WPS) protests related solicitations for guard services issued by the General Services Administration. The first, B-225610, is a protest against the rejection of its bid for service area 9 as unreasonably priced under invitation for bids No. 9PPB-86-C-0539. WPS was the sole responsive bid for service area 9 and the rejection of its bid resulted in the cancellation of the IFB. The second protest, B-225878, is a protest against the award of an interim 3-month contract to Dean Security Professionals for service area 9 under request for proposals (RFP) No. 9PPB-87C-0758. The third, B-226411, is a protest against the issuance of IFB No. 9PPB-87-KS0910, the resolicitation for guard services for the full term for service area 9. All of the protests rest on the same theory--that WPS was

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entitled to award of a contract for service area 9 under the original IFB because rejection of its bid as unreasonably priced was improper and made in "less than good faith."

We deny the protests.

WPS submitted bids under the IFB for service areas 6, 7 and 9, but was the low bidder only for service area 7. Dean was the low bidder for service areas 6 and 9. However, Dean's bids were rejected as nonresponsive for failure to provide the required bid guarantees, leaving WPS as the apparent low bidder for services areas 6, 7, and 9. The contracting officer, however, found its bid of \$22,417 per month for service area 9 to be unreasonable and rejected WPS bid.

Because a total of 6 protests were filed before award under the original IFB, the contracting officer, in order to prevent an interruption of these essential services when the current contracts expired on December 31, issued an RFP for interim 3-month contracts for the same services to begin on January 1, 1987. After the RFP was issued, however, all protests, other than B-225610 and B-225878, were dismissed, withdrawn or resolved. The contracting officer thereafter canceled the RFP for all service areas except for service area 9 and made awards under the IFB for all service areas except 9. WPS was awarded a contract for the service areas 6 and 7 requirements. The contracting officer then made an award to Dean of a 3-month contract under the RFP for the service area 9 requirements. Protest B-226411 was filed after the full-term resolicitation was issued.

The issue presented by WPS's protests is whether the contracting officer properly found WPS's bid price for the service area 9 requirements to be unreasonable. The protests also raise an issue with regard to the good faith of the contracting officer.

Before awarding any contract, a contracting officer must determine that the price at which the contract would be awarded is reasonable. Federal Acquisition Regulation (FAR), 48 C.F.R. § 14.407-2 (1986). Our Office will not question a contracting officer's determination in this regard unless it is unsupported or there is a showing of bad faith or fraud by the contracting officials. The price reasonableness determination may be based on a comparison with a government estimate, past procurement history, the current market conditions or any other relevant factors. Loral Packaging Inc., B-221341, Apr. 8, 1986, 86-1 CPD ¶ 347. Moreover, the other factors may include comparison with a nonresponsive

bid. Sylvan Service Corp., B-222482, July 22, 1986, 86-2 CPD ¶ 89; Adam Electric Co., Inc., B-207782, Dec. 27, 1982, 82-2 CPD ¶ 576 at 3.

These principles when applied to the facts presented here, provide no basis for finding the contracting officer's determination that WPS's price of \$22,417 per month for service area 9 under the original IFB to be unreasonable when compared to Dean's price of \$15,100 per month and the price for the immediate prior contract period (\$15,600 per month). As WPS's price was about 33 percent higher^{1/} than Dean's, and the immediate prior contract price we cannot question her decision that WPS's price was unreasonably high. The W.H. Smith Hardware Co., B-221792, May 9, 1986, 86-1 CPD ¶ 446. With regard to the RFP, (B-225610), she compared WPS's price of \$22,399 and made the award at \$20,000 to Dean.^{2/} WPS's RFP price for service area 9 was not found to be unreasonable for the 3-month period, but it was not low.

We understand WPS's statement that the contracting officer in this case "has demonstrated far less than good faith and impartial administration" to mean that the contracting officer acted in bad faith. In this regard, we point out that the protester has the burden of proof when alleging bad faith and a showing of bad faith requires proof that the contracting official had a specific and malicious intent to injure the protester. Gayston Corp.--Request for Reconsideration, B-223090.2, July 25, 1986, 86-2 CPD ¶ 115.

WPS has presented no such proof but attributes to bad faith such ambiguous incidents as its failure to receive the RFP in a timely manner in spite of repeated requests for it. However, WPS did receive the RFP and submitted a proposal on time. WPS also attributes to bad faith the contracting officer's finding that WPS's price for the service-area 9 requirements under the IFB to be unreasonable. As we have stated above, the contracting officer's determination that WPS's bid was unreasonable is sufficiently supported by the record. WPS suggests that the contracting officer's failure to investigate unemployment insurance rates, security

^{1/} In contrast, WPS's bid for service area 6 was less than $\frac{8}{8}$ percent higher than Dean's nonresponsive bid.

^{2/} GSA reports that short term contracts are usually higher priced than longer term contracts because start-up costs have to be recovered in a short time frame. We have no basis upon which to disagree.

training costs, labor pool demographics and availability, wage rates, supervisory costs and local tax withholding requirements reflects shameful conduct. While the contracting officer might inquire into some of these items we do not agree that she was required to do so. We think that the contracting officer had enough information based on the competition and historical data for her to conclude the price bid by WPS for service area 9 was unreasonable, without the investigations suggested by WPS.

The protests are denied.

for Seymour E. Van Cleve
Harry R. Van Cleve
General Counsel